

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TRAVIS SCOTT ERB,	:	CIVIL ACTION NO. 1:09-CV-2123
Plaintiff	:	
	:	
	:	(Judge Conner)
v.	:	
	:	
WILLIAM SULLIVAN, LESLIE A.	:	
FILLAK, and LEBANON COUNTY,	:	
Defendants	:	

ORDER

AND NOW, this 29th day of November, 2010, upon consideration of the report of United States Magistrate Judge Malachy E. Mannion (Doc. 30), recommending that the Motion to Dismiss filed on behalf of Defendant Leslie A. Fillak (Doc. 10) and the Motion to Dismiss filed on behalf of Defendants William Sullivan and Lebanon County (Doc. 16) be granted, and, following an independent review of the record and noting that plaintiff filed objections¹ to the report on September 24, 2010 (Doc. 31), and the court finding Judge Mannion's analysis to be thorough and well-reasoned, and the court finding plaintiff's objections to be without merit and squarely addressed by Judge Mannion's report, it is hereby ORDERED that:

¹ Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. Supinski v. United Parcel Serv., Civ. A. No. 06-0793, 2009 WL 113796, at *3 (M.D. Pa. Jan. 16, 2009) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" Id. (citing Shields v. Astrue, Civ. A. No. 07-417, 2008 WL 4186951, at *6 (M.D. Pa. Sept. 8, 2008)).

1. The Report of Magistrate Judge Mannion (Doc.30) is ADOPTED in its entirety.
2. The Recommendation of the Magistrate Judge is ADOPTED in part and DENIED in part.
3. The Motion to Dismiss filed on behalf of Defendant Fillak (Doc. 10) is GRANTED. Leave to Amend is denied as futile.
4. The Motion to Dismiss filed on behalf of Defendants Sullivan and Lebanon County (Doc. 16) is GRANTED. Leave to Amend the Complaint as to Defendant Sullivan is denied as futile. Leave to Amend the Complaint as to the Monell claim against Lebanon County is GRANTED.² Plaintiff shall file an amended complaint clearly articulating the offending policy or custom of Lebanon County, the municipal policymaker and all applicable elements of this Monell claim within twenty (20) days of the date of this order. Failure to file an amended complaint shall be deemed an abandonment of the claim and the case shall be dismissed in its entirety.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

²In his brief in support of objections, counsel for plaintiff “suggests that the court that (sic) amendment would be futile because there is nothing to be added to the material facts.” Counsel’s suggestion notwithstanding, the court must offer plaintiff the option to file an amended pleading. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002) (holding that the district court should permit a curative amendment even when plaintiff does not seek leave to amend).